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**AUG 17 2005**

**OFFICE OF PETITIONS**

In re Application of :  
Fouillet et al. :  
Application No. 09/772,280 : DECISION ON APPLICATION  
Filed: January 29, 2001 : FOR  
Atty Docket No. G-069US02CIP : PATENT TERM ADJUSTMENT  
:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705(b)," filed April 8, 2005. Applicants assert entitlement to two hundred twenty-seven (227) days of patent term adjustment. In part, applicants request reconsideration on the basis of the Office taking in excess of three years to issue the patent.

As it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being held in abeyance until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b).

Patentee is given TWO (2) MONTHS from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. Patentee may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated

in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

The request for reconsideration of the patent term adjustment at the time of mailing of the notice of allowance is otherwise **DISMISSED**.

On January 10, 2005, the Office mailed the initial Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 0 days. On April 8, 2005, applicants timely<sup>1</sup> submitted an application for patent term adjustment (with required fee). Therein, applicants asserted, inter alia, that a period of reduction of 86 days, not 87 days, should have been entered for applicant delay in responding to the non-final Office action mailed June 20, 2002. In addition, applicants asserted that a period of reduction of 5 days should have been entered for Office delay in mailing the notice of allowance.

Applicants' assertions are not well taken. Applicants' response to the non-final Office action mailed June 20, 2002, was not received into the Office until December 16, 2002, three months and 87 days later. Pursuant to § 1.704(b), this constitutes a delay of 87 days (not 86 days). Furthermore, there is no Office delay associated with the mailing of the notice of allowance. The notice of allowance was mailed on January 10, 2005, in response to, and within four months of, applicants' filing of a response on October 5, 2004.

In view thereof, the patent term adjustment at the time of mailing of the notice of allowance is zero (0) days (83 days of Office delay reduced by 242 (87 + 31 + 32 + 92) days of applicant delay).

Petitioner is reminded that if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap

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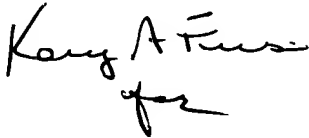
<sup>1</sup> Office records indicate that the Issue Fee payment was also received on April 8, 2005.

under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule, 69 Fed. Reg. 21704 (April 22, 2004).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Office of Patent Publication for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

A handwritten signature in cursive script, appearing to read "Karin Ferriter".

Karin Ferriter  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy